

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 JUDITH ALLEN, *et al.*,) No. CV 14-2721 MWF (FFMx)
11 Plaintiffs,)
12 v.) PROTECTIVE ORDER RE
13 GIRARDI KEESE, *et al.*,) DOCUMENTS PRODUCED BY
14 Defendants.) TORREY PINES BANK

16 IT IS HEREBY ORDERED, that the following procedures shall govern the
17 disclosure of information by Torrey Pines Bank in response to the subpoena served on
18 it by Plaintiffs on March 13, 2015:

19 1. Any material (the “Bank Material”) produced by Torrey Pines Bank (the
20 “Bank”) in response to the subpoena served on it by Plaintiffs on March 13, 2015
21 shall presumptively be deemed CONFIDENTIAL - ATTORNEY’S EYES ONLY,
22 whether or not so marked by the Bank prior to production. The presumption is
23 rebuttable. In the event of any dispute over the confidential nature of any of the Bank
24 Material (or the propriety of an ATTORNEYS’ EYES ONLY designation) defendants
25 bear the burden of demonstrating that the material is entitled to such designation.

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1 2. Prior to production of the Bank Material on plaintiffs, the Bank Material
2 may be disclosed to a neutral third party (the “Neutral”) for the purposes of reviewing
3 the material and redacting the names and other identifying information of third parties.
4 The Neutral must be jointly selected by the parties within five court days of the entry
5 of this Order, except that defendants may elect, within that same period, to forego
6 Neutral review of the Bank Material prior to production on plaintiffs. The presumed
7 **CONFIDENTIAL - ATTORNEY'S EYES ONLY** designation of the Bank Material
8 shall continue after production of redacted or unredacted Bank Material on plaintiffs
9 by the Bank or by the Neutral after review and redaction.

10 3. Until and unless the designation **CONFIDENTIAL** and/or (as the case
11 may be) **CONFIDENTIAL - ATTORNEY'S EYES ONLY** is removed from any of
12 the Bank Material, such material shall be used solely for the purposes of this action
13 and for no other purpose.

14 4. The Bank Material shall not be shown, revealed, released, disclosed, or
15 communicated in any way to any person or entity, except the following:

16 (a) All counsel of record engaged in the litigation of this action, and
17 professional clerical secretarial and other support personnel of such counsel
18 necessary to assist in this action;

19 (b) Independent experts or consultants who are retained to consult with
20 or assist counsel for either party in the preparation of this action for trial;
21 provided that prior to disclosure, any such expert is provided with a copy of this
22 Order and acknowledges in writing that he or she agrees to be bound by these
23 terms;

24 (c) Witnesses in the course of deposition testimony in the reasonable and
25 good faith belief of counsel that any such witness has prior knowledge of the
26 information contained in the records;

27 (d) This Court and its employees and court reporters transcribing
28 testimony taken in this case and notarizing officers;

(e) Independent outside vendors not affiliated with the parties for purposes of performing clerical-type services with respect to trial preparation in connection with this litigation, *e.g.*, photocopying, imaging, computer data entry, electronic discovery production or processing, preparation of summaries or graphics, and the like, provided that they have access to the documents only to the extent necessary to perform their duties;

(f) Any person indicated on the face of the documents to be an originator, author and/or a recipient of the document; and

(g) Any person who is determined to have been an author and/or previous recipient of the document, but is not identified on the face thereof, provided there is prior testimony of actual authorship or receipt of the document by such person.

13 5. To the extent the ATTORNEYS' EYES ONLY designation is removed
14 by stipulation or Court order from any portion of the Bank Material, that portion of
15 the Bank Material may be shown to any of the plaintiffs, to the extent such disclosure
16 is necessary in connection with the litigation.

17 6. Prior to disclosure to any person pursuant to subparagraphs (b) and/or (e)
18 of paragraph 5, such person must be given a copy of this order and must acknowledge
19 that he is aware that he is bound by the terms hereof by signing and dating a document
20 confirming those facts. A copy of such document and an up-to-date curriculum vitae
21 of such person, including an identification of any past or present business relationship
22 or affiliation with any party to this action, shall be served on defendants in this action.
23 No material designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be
24 shown to that person until ten business days after such service in order to allow any
25 defendant the opportunity to object to the disclosure of the records to such person. An
26 objection may only be made when the objecting party believes in good faith that good
27 cause exists for the objections.

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1 7. If objection to disclosure is made within the time specified, the parties
2 shall meet and confer within five business days of service of such objections. If the
3 issue is not resolved, the party seeking to disclose the records may seek an order
4 within ten business days thereafter. Any such motion must comply with Local Rule
5 37 and include a joint stipulation. Where an objection is made, the records shall not
6 be disclosed to such person until the day after the last day to file a motion seeking an
7 order granting the person access to the records (where no such order is sought), or
8 upon entry of the Court order granting the party's motion. If the parties wish to file
9 the Joint Stipulation required by Local Rule 37 under seal, the parties may file a
10 stipulation along with an application pursuant to Local Rule 79-5, or the moving party
11 may file an ex parte application making the appropriate request pursuant to Local Rule
12 7-5. Good cause must be set forth in the stipulation or ex parte application as to why
13 the Joint Stipulation or portions thereof should be filed under seal.

14 8. If any party wishes to use any information derived from Bank Material in
15 connection with any pleading, motion, brief, appendix or other paper filed with the
16 Court, the paper containing such information shall be submitted along with an
17 application pursuant to Local Rule 79-5.1. If the application is granted, the portions
18 of the filing affected by such order shall be maintained by the Clerk of this Court
19 under seal, and such portions of the filing shall not be made available to anyone
20 except pursuant to order of the Court. The party seeking to file the paper under seal
21 shall simultaneously file and serve a public version of the paper with such information
22 redacted.

23 9. Unless otherwise agreed in writing by defendants or ordered by the
24 Court, within sixty (60) days after final settlement or determination of this action,
25 including all appeals, each person receiving the Bank Material, or any portion of it,
26 shall return to defendants all such records in its possession or control and all copies
27 thereof; or at its option shall destroy and certify to defendants the destruction of all
28 documents and other material or portions thereof containing or reflecting any of the

1 information contained on such records. Notwithstanding the foregoing, nothing
2 contained in this provision shall require that any party's counsel destroy its own
3 attorney work product or turn over its own attorney work product to another party.

4 10. Outside counsel for the parties shall be permitted to retain a file copy of
5 materials created during the course of the litigation, including pleadings and all other
6 materials made a part of the record, deposition and trial transcripts and exhibits, and
7 any attorney work product created by the attorney which includes such information.
8 However, the confidentiality of such material must be maintained in accordance with
9 the provisions of this Protective Order. Such retained material shall not be used for
10 any purpose, except in connection with any action arising directly out of this action, or
11 pursuant to a Court order for good cause shown. Upon request, counsel for each party
12 shall verify in writing that they have complied with the provision of this paragraph.

13 11. In the event any person or receiving party having possession, custody or
14 control of any of the Bank Material receives a subpoena or other process or order to
15 produce such information, the party to whom the subpoena or other request is directed
16 shall immediately give written notice thereof to defendants and shall afford defendants
17 a reasonable opportunity to pursue formal objections to such disclosures. The party to
18 whom the subpoena or other request is directed shall not produce any of the Bank
19 Material prior to the date of production specified in the subpoena or other process.

20 12. The provisions of this protective order shall not apply to any trial
21 proceedings herein. Any protection of information contained in the Bank Material in
22 connections with such proceedings must be obtained from the judicial officer
23 conducting the proceedings.

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1 13. This order does not apply to documents already in the possession of
2 plaintiffs or their counsel as of the date hereof.

3 **IT IS SO ORDERED.**

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5 DATED: July 13, 2015

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7 /S/ FREDERICK F. MUMM

8 FREDERICK F. MUMM

9 United States Magistrate Judge

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